



FREQUENTLY ASKED QUESTIONS REGARDING LEGAL ASSISTANCE IN CRIMINAL MATTERS

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**OFFICE OF INTERNATIONAL AFFAIRS
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE**

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LEGAL ASSISTANCE IN CRIMINAL MATTERS
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What is the role of the Office of International Affairs (OIA) in mutual legal assistance?

The Office of International Affairs (OIA) is an office in the Criminal Division of the U.S. Department of Justice. OIA is legally designated as the Central Authority of the United States under treaties, multilateral conventions, and executive agreements providing for mutual legal assistance in criminal matters. These various treaties and international instruments are referred to as “MLATs.” As the U.S. Central Authority responsible for implementing MLATs, OIA assists foreign prosecutors, investigating judges and law enforcement authorities to secure information and evidence located in the United States for use in criminal investigations, trials, and related proceedings in the foreign country. After determining that a request is factually and legally sufficient and should be executed, OIA may either take steps to give effect to the request or designate another U.S. authority, such as a federal prosecutor or law enforcement agency, to do so. OIA also makes requests for assistance to other countries on behalf of prosecutors and investigators conducting criminal investigations, prosecutions, and related proceedings in the United States.

Who may request assistance from the United States?

Foreign authorities, such as prosecutors, investigating judges and criminal investigators, may seek assistance. Legally designated Central or Competent Authorities (Central Authority) under MLATs or international agreements may make requests to the United States on behalf of their investigating and judicial authorities. All requests made pursuant to MLATs *must* be submitted through the Central Authority designated to make requests on behalf of authorities of the requesting country pursuant to the specific treaty or multilateral convention invoked. OIA cannot execute a request for assistance pursuant to the terms of an MLAT if the request for assistance is not submitted through the requesting country’s Central Authority.

Does my country have an MLAT with the United States?

The United States maintains a broad network of bilateral MLATs. In addition, the United States is party to a series of multilateral conventions that provide for mutual legal assistance in criminal matters. To determine whether your country has an MLAT with the United States, please consult the document titled, “Mutual Legal Assistance Treaties of the United States.”

May the United States assist in the absence of an MLAT?

Yes. OIA may execute non-treaty requests for assistance based on comity and reciprocity. In the absence of a bilateral MLAT or an applicable, multilateral convention to which the United States and the requesting country are parties, OIA accepts non-treaty requests in the form of letters rogatory and letters of request. These non-treaty requests may be transmitted through the diplomatic channel if such transmission is required by the laws of the requesting country. The laws of the United States do not require receipt of such requests through the diplomatic channel. Consequently, OIA encourages transmission directly to OIA, preferably by email, whenever possible. Foreign authorities wishing to submit a request for assistance are encouraged to contact OIA for instructions on submitting their requests.

What type of assistance is available from the United States?

The United States may provide a broad range of assistance when the information or evidence sought is located in the United States. That assistance includes, but is not limited to:

Producing documents, records, or other items;

Producing electronic evidence, including subscriber information, transactional/traffic data, and content of communications;

Taking the statements or testimony of witnesses, including by videoconference;

Providing publicly available information and documents of government agencies;

Executing requests for searches and seizures;

Locating or identifying persons or items;

Transferring witnesses in custody to assist with the investigation or prosecution of offenses;

Serving legal process or other notifications on persons located in the United States; and

Assisting with the immobilization, forfeiture and recovery of instrumentalities and proceeds of crime

Some types of assistance may be subject to the application of an MLAT and/or the existence of dual criminality.

I am a prosecutor, investigating magistrate or judge. How do I make a request to the United States for assistance in a criminal case?

When a request is made pursuant to an MLAT or a multilateral convention, it must be transmitted to OIA through the treaty partner’s legally designated Central Authority and must contain the information set out in the MLAT or convention. Prepare your assistance request ensuring that the requirements of the MLAT or convention and any requirements of your domestic law are satisfied. Your country’s Central Authority may be able to provide you with guidance regarding your country’s own requirements. Then, submit the request to your

country's Central Authority for further transmission to OIA. OIA will evaluate the request for compliance with the requirements of the MLAT or convention and U.S. law.

If your country lacks a bilateral MLAT with the United States, and no multilateral convention applies, prepare your request in accordance with your domestic legal requirements but please ensure that you provide the following information, which, typically, is also required for requests submitted pursuant to MLATs:

1. Identification of the competent authority conducting the investigation or proceeding to which the request for assistance relates, including the name, official position, and contact information of that authority;
2. The description of the offense to which the request relates, including the text of the relevant laws and the applicable penalty;
3. A description of the facts that are alleged to constitute the offense;
4. A statement of the purpose for which the evidence, information, or other assistance is sought, including the nexus between the assistance sought and the offense;

To the extent applicable, also provide the following information:

5. Information on the identity and location of any person from whom evidence is sought;
6. The identity and location of a person to be served with notice or legal documents, the person's relationship to the proceeding, and a description of how service is to be made;
7. The identity and whereabouts of a person to be located;
8. A precise description of the place or person to be searched and of the items to be seized;
9. A description of how testimony or statements are to be taken and recorded;
10. A list of questions to be asked of a witness;
11. A description of the procedures to be followed in executing the request;
12. The allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
13. Any other information that may facilitate OIA's execution of the request.

If I need technical assistance to access evidence on a device that I already have in my possession, may I make a legal assistance request?

The legal assistance process is intended to facilitate the production of evidence located in one country to the competent authorities investigating criminal activity in another country. The MLAT process is not intended to secure technical assistance when the evidence in question, e.g., a seized electronic device, is already in the possession of the investigating authorities. Any device located in the United States for the purpose of a search will be subject to U.S. legal requirements to access the evidence. Please do not send evidence (such as an electronic device) to OIA that is already in your custody for the purpose of facilitating access to that evidence. If you would like to determine whether U.S. authorities can assist you in accessing electronic devices seized in your country, please consult U.S. law enforcement agencies located abroad to

determine whether they can assist while the evidence remains in your custody and subject to your laws.

Who will execute my legal assistance request?

OIA will review the foreign assistance request to determine whether it (1) complies with the MLAT, if any; (2) contains all the required information to allow identification and location of the assistance or evidence requested; (3) is not subject to a ground for refusal; and (4) contains sufficient information to meet the U.S. legal standards for execution. If the request satisfies the above-mentioned requirements, OIA will either proceed to gather the evidence requested or refer the request to another competent authority (i.e., a federal prosecutor or law enforcement agency) to gather the evidence or complete the steps necessary to provide the assistance. If the request does not satisfy all the above-mentioned requirements, an OIA staff member may send a request for additional information or clarification to the foreign Central Authority. The sooner the authority seeking assistance responds to the request for information, the sooner OIA will be able to respond to the request. Once execution of the request is completed, OIA will respond to the requesting authority through the same channel used to make the request (i.e., through the requesting country's Central Authority or other designated channel).

Will my request for assistance remain confidential?

OIA can take certain measures to execute a legal assistance request under conditions of confidentiality. However, if confidentiality is necessary, the requesting authority *must request* confidentiality.

What U.S. legal standard must be satisfied to execute my assistance request?

OIA applies self-implementing MLATs, multilateral conventions and U.S. law, including Title 18, United States Code, Section 3512, to execute foreign requests for assistance. The legal standard that must be satisfied when executing a request depends on the type of legal process that must be issued to produce the evidence or assistance requested. The following chart provides examples of the most requested types of assistance or evidence, the U.S. legal process needed to provide the assistance or evidence requested and the U.S. legal standard that must be satisfied to cause the legal process to issue. These are examples only and not a complete list of the types of assistance available.

<u>Type of Assistance Requested</u>	<u>U.S. Legal Process Needed</u>	<u>U.S. Legal Standard</u>
Searches & Seizures of Items	Search Warrant from a Court	Dual criminality and probable cause
Content of Electronic Communications	Search Warrant from a Court	Dual criminality and probable cause
Subscriber Information and Transactional/Traffic Records for Electronic Accounts	Order from a Court	Relevance and materiality to the criminal investigation, based on specific and articulable facts
Bank and Business Records	Subpoena approved by a Court	Relevance

<u>Type of Assistance Requested</u>	<u>U.S. Legal Process Needed</u>	<u>U.S. Legal Standard</u>
Compulsory Interviews and Testimony	Subpoena approved by a Court	Relevance
Handwriting Exemplars	Subpoena approved by a Court	Relevance
Most Government Records	Request from OIA	Relevance
Voluntary Interviews & Testimony	Request from OIA	Relevance
Voluntary Production of Evidence	Request from OIA	Relevance
Notification of Summons/Service of Documents	Notification/Service of Process	Relevance

What is “probable cause” and how do I satisfy this legal standard?

Probable cause is a requirement of the Fourth Amendment to the U.S. Constitution, which provides that “. . . no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” This requirement permits U.S. courts to issue warrants for searches only when a prosecutor can establish, through the affidavit of a U.S. agent, that there is probable cause to believe that a crime has been committed and that it is more likely than not that evidence of that crime will be found in the place to be searched.

To satisfy the probable cause standard to conduct a search or to produce the content of electronic communications, it is necessary to have (1) reasonably trustworthy information that is sufficient to (2) cause a person of reasonable caution to believe that evidence of an offense will be found in the place to be searched. This standard has been further elaborated under the jurisprudence of the U.S. Supreme Court. While this body of jurisprudence is complex and beyond the scope of these materials, we offer more discussion of the probable cause standard under U.S. law in the document titled, “A Brief Explanation of Probable Cause for Foreign Authorities.”